

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK		
MIDCAP BUSINESS CREDIT, LLC, Plaintiff, v. MIDCAP FINANCIAL TRUST, MIDCAP FINANCIAL SERVICES, LLC, MIDCAP FINANCIAL SERVICES CAPITAL MANAGEMENT, LLC, MIDCAP FINCO DESIGNATED ACTIVITY COMPANY, AND APOLLO CAPITAL MANAGEMENT, L.P., Defendants.		Case No: 1:21-cv-07922-AKH ECF Case

DECLARATION OF JARED I. KAGAN

I, Jared I. Kagan, hereby declare as follows:

1. I am a member of the bar of this Court and associated with Debevoise & Plimpton LLP, counsel for Defendants MidCap Financial Trust, MidCap Financial Services, LLC, MidCap Financial Services Capital Management, LLC, MidCap FinCo Designated Activity Company, and Apollo Capital Management, L.P. in the above-captioned action. I respectfully submit this declaration in support of Defendants' Motion to Dismiss.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint filed in this action.

3. Attached hereto as **Exhibit B** is a true and correct copy of Plaintiff MidCap Business Credit, LLC's Trademark/Service Mark Application for MIDCAP BUSINESS CREDIT (Ser. No. 86/301,551) filed with the United States Patent and Trademark Office

(“USPTO”), dated June 5, 2014.

4. Attached hereto as **Exhibit C** is a true and correct copy of the USPTO’s Office Action dated September 17, 2014, refusing registration of Plaintiff’s application to register MIDCAP BUSINESS CREDIT.

5. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff’s response to the USPTO’s Office Action, dated March 17, 2015, without exhibits.

6. Attached hereto as **Exhibit E** is a true and correct copy of the Amendment to Plaintiff’s trademark application for MIDCAP BUSINESS CREDIT, dated March 19, 2015.

7. Attached hereto as **Exhibit F** is a true and correct copy of Plaintiff’s United States Trademark Registration for MIDCAP BUSINESS CREDIT (Reg. No. 4,797,903), registered August 25, 2015.

8. Attached hereto as **Exhibit G** is a true and correct copy of Plaintiff’s Trademark/Service Mark Application for MIDCAP (Ser. No. 90/844,904), dated July 23, 2021.

9. Attached hereto as **Exhibit H** are true and correct copies of the definition for “midcap” from:

- a. American Heritage Dictionary’s website (available at <https://www.ahdictionary.com/word/search.html?q=midcap>) (last visited December 2, 2021);
- b. Investopedia (available at <https://www.investopedia.com/terms/m/midcapstock.asp>) (last visited December 2, 2021); and
- c. Dictionary.com (available at <https://www.dictionary.com/browse/mid-cap>) (last visited December 2, 2021).

10. Attached hereto as **Exhibit I** are true and correct copies of:
- a. the Russell US stock indices (available at <https://www.ftserussell.com/products/indices/russell-us>) (last visited December 2, 2021);
 - b. the “Overview” page of the S&P MidCap 400 stock index (available at <https://www.spglobal.com/spdji/en/indices/equity/sp-400/#overview>) (last visited December 2, 2021);
 - c. the homepage for MidCap Hotel Loans (available at <https://midcaphotelloans.com/>) (last visited December 2, 2021);
 - d. the homepage for MidCap Loans (available at <https://midcaploans.com/>) (last visited December 2, 2021);
 - e. the “Overview” page of Vanguard Mid-Cap Growth Fund (available at <https://investor.vanguard.com/mutual-funds/profile/overview/vmgrx>) (last visited December 2, 2021);
 - f. the “Fact Sheet” for Thompson MidCap Fund (available at https://www.thompsonim.com/funds/mid_fact.html) (last visited December 2, 2021); and
 - g. the homepage for MidCap Advisors (available at <https://www.midcapadvisors.com/>) (last visited December 2, 2021).

11. A Google search for “midcap” for the time period between November 2, 2021 and December 2, 2021 yields dozens of news articles. Attached hereto as **Exhibit J** are true and correct copies of examples of those articles.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is true and correct. Executed this 3rd day of December, 2021 at New Rochelle, New York.

s/ Jared I. Kagan